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SUPREME COURT, U.S.
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No. 04-97

IN THE

Supreme Court of the United States

WILLIAM J. BERENS and PHILLIP H. MARTIN, Trustees,

Petitioners,

v.

CWM and ACM, by PAM, and DHM,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE MINNESOTA COURT OF APPEALS

BRIEF IN OPPOSITION FOR RESPONDENTS CWM, PAM, AND DHM

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QUESTIONS PRESENTED

1. Where petitioners fail to raise a federal question in the state court proceedings, does this Court lack jurisdiction to issue a writ of certiorari?

2. Did the Minnesota Court of Appeals correctly determine that third-party trustees have no interest affording them standing to attack parent-child relationships conclusively established for all purposes in Florida, the domicile of the children, and Minnesota, the situs of the trust?

LIST OF PARTIES

Petitioners William J. Berens (as successor to Robert J. Struyk) and Phillip H. Martin are trustees of three trusts: the JHM 1974 Trust, the 1980 JHM Family Trust, and the 1980 SMC Trust. They appear in this litigation in their capacities as trustees. They are referred to herein as "Petitioners" or "Trustees."

Respondent ACM is a minor, and appears in this litigation through PAM, his mother. DHM and CWM, sons of JHM and PAM who have reached the age of majority, are also Respondents. These three children of JHM and PAM are referred to herein as "the Younger Children."

In addition to the above parties who are listed in the caption, the following other children of JHM through previous marriages also appeared in the proceedings below:

AMP
DDM
JM
DCM
KMR
SMK

These six children are referred to herein as "the Older Children."

By Orders of the Minnesota Court of Appeals filed on June 25, 2003 and July 21, 2003, the parties were directed to use initials or pseudonyms in their filings when referring to the parties to this matter. Accordingly, the initials used in the Minnesota appellate courts are used herein.

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RELEVANT AUTHORITY INVOLVED

Petitioners cite the due-process provision of the United States Constitution amendment XIV as the sole predicate for their Petition. However, as discussed below, Petitioners failed to raise this provision in any of the Minnesota state court proceedings.

STATEMENT OF THE CASE

A. The Trusts

The trusts ("Trusts") created by JHM at issue here are: (1) the JHM 1974 Trust dated December 31, 1974 ("1974 Trust"); (2) the 1980 JHM Family Trust dated December 30, 1980 ("1980 JHM Trust"); and (3) the 1980 SMC, KWM and LMS Trust dated December 30, 1980 ("1980 SMC Trust").[1] These latter two trusts are also collectively referred to herein as the "1980 Trusts." The Trusts all left the class of beneficiaries open to those born after the Trusts were established. Minnesota is the situs of the Trusts.

The principal beneficiaries of the 1974 Trust are JHM's "issue." The 1974 Trust defines "issue" as:

> [A]ll persons who are descended from the person referred to, either by legitimate birth to or legal adoption by him.

The 1980 JHM Trust names JHM's grandchildren as the primary beneficiaries. The primary beneficiaries of the 1980

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1. It is undisputed that JHM funded the 1980 SMC Trust and thus is the trust settlor. (Mem. in Supp. of Mot. to Dismiss dated Feb. 6, 2002, at 8-10.)

SMC Trust are JHM's children. In both 1980 Trusts, a "child" or "grandchild" is defined as "issue." The 1980 Trusts contain the identical definition of "issue":

> "Issue" means all persons who are lineal descendants of the person whose issue are referred to (including legally adopted lineal descendants and including lineal descendants in gestation, but not including step-children and foster-children of any generation) except (i) persons who become descendants by legal adoption after attaining the age of 18 years and their descendants and (ii) illegitimate descendants and their descendants.

Petitioners concede there is no extrinsic contemporaneous evidence of JHM's intent with respect to the definitions of "issue." As one of their attorneys acknowledged, "[T]here is now no evidence that [JHM] did think about this [language] one way or the other." (Respondents' Ct. of Appeals App. at 217.)

B. JHM, PAM and Their Children

The Younger Children were born in Florida during JHM and PAM's marriage, which began in 1979 and ended in 1991. JHM is listed as the father of the children on their respective birth certificates. The Younger Children have lived in Florida since their birth, as have JHM and PAM.

JHM has six Older Children from two earlier marriages. Three of the Older Children—JM, DDM, and KMR—are trustees of the two 1980 Trusts. JHM is one of several heirs to a large, closely-held company fortune. Petitioners, the remaining trustees, are members of the company's law firm.

The Younger Children's parentage was first addressed in 1986, when JHM filed for divorce from PAM. In his Divorce Petition, JHM denied being the father of DHM and CWM. JHM later dismissed the divorce action, and stipulated, in the dismissal filed with the Florida Court, that "with respect to the issues raised by him relative to the paternity of [CWM and DHM], he [JHM] hereby voluntarily dismisses his petition with prejudice."[2] (Emphasis in original.) JHM and PAM continued their marriage for an additional five years, during which the youngest child, ACM, was born.

In 1989, the trustees of another family trust not in issue here brought a petition in Minnesota state court seeking authorization to distribute many millions of dollars to all of JHM's "children," defined in the trust as "all legal issue". In this petition, the Younger Children (along with the Older Children) are identified as JHM's children, and as such, eligible to receive trust funds. The Older Children all received notice of this petition; none of them made an appearance or filed an objection in the proceeding. The district court found that the Younger Children are JHM's children (i.e., his legal issue), and thus beneficiaries of the trust.

JHM divorced PAM in 1991. In the divorce Settlement Agreement, incorporated within an adjudicated Judgment and Decree in Florida, JHM acknowledged that the Younger Children are his children born of his marriage to PAM. The Settlement Agreement and Judgment and Decree conclusively resolved any issue of parentage of all the Younger Children, to the extent any such issue remained. JHM not only

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2. Petitioners fail to mention in their statement of facts that the dismissal was with prejudice.

acknowledged the Younger Children as his and agreed to support them, but also specifically agreed that the Younger Children would share equally with his other children in any testamentary disposition of his assets, including assets held in trust for his benefit. He did so with knowledge they are not his natural children. Contrary to Petitioners' statement of facts, the Settlement Agreement was not simply an agreement for support—it was an adjudication of parentage under Florida law.

C. The Legal Proceedings Seeking to Eliminate the Younger Children as Trust Beneficiaries.

In 2000, at least nine years after the Younger Children's parentage had been finally and conclusively established for all purposes under Florida law, JHM was declared legally incapacitated in an action brought by two of the Older Children, KMR (a trustee of the 1980 Trusts) and SMK. Less than three months after JHM was declared legally incapacitated, Petitioners, at the behest of the Older Children, brought an action in Minnesota state district court, purportedly under Minn. Stat. § 501B.16,[3] in which they asked the court to determine the beneficiaries of the Trusts.

Petitioners, supported by briefs filed by the Older Children, moved for partial summary judgment construing the Trusts as limiting beneficiaries to JHM's biological children. They also asked the Court to order blood or saliva tests to resolve the question of the "parentage" of the Younger

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3. Section 501B.16 permits a trustee to petition the court to, among other things, interpret a trust and determine the persons having an interest in the trust's income and principal. Minn. Stat. § 501B.16 (2002).

Children. Respondents moved to dismiss the petition because Petitioners lack standing to challenge the parentage of the Younger Children, which has long been established in Florida, their domicile. In the alternative, Respondents sought summary judgment based on the language of the Trusts, which does not require biology as a criteria for beneficiary status. The district court granted Petitioners' Motion for Partial Summary Judgment, finding that beneficiaries need to be biological descendants, and denied Respondents' Motion to Dismiss, finding the Trustees have standing to challenge the paternity of the Younger Children. The district court subsequently ruled that the Younger Children are not the biological descendants of JHM unless they submit to DNA testing to establish their biological connection to him.

Recognizing this action as a paternity challenge,[4] the Minnesota Court of Appeals reversed the district court's grant of partial summary judgment to Petitioners, and ordered entry of summary judgment in favor of the Respondents. The court held that because the Younger Children's paternity had been conclusively determined under applicable parentage laws, Petitioners could not collaterally challenge the determination under the guise of seeking trust instruction under Minn. Stat. § 501B.16. The Court of Appeals explained that because the presumption of the Younger Children's parentage is now irrebuttable under both Florida and Minnesota law, the Younger Children are JHM's biological descendants as a matter of law.

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4. "As the filings in this matter make clear, the challenge to the younger children's paternity is the kernel of the trustees' petition." *In the Matter of the Trusteeship of the Trust Created Under Trust Agreement dated Dec. 31, 1974* ("12/31/74 Trust Case"), 674 N.W.2d 222, 228 (Minn. Ct. App. 2004).

Petitioners and the Older Children both filed petitions for further review of the Court of Appeals' decision with the Minnesota Supreme Court. The Minnesota Supreme Court denied these petitions.

REASONS FOR DENYING THE PETITION

"A petition for a writ of certiorari will be granted only for compelling reasons." Sup. Ct. R. 10. Petitioners present no such reasons for this Court's review of the decision below. Indeed, the decision below does not conflict with a decision of this Court, any Court of Appeals, or any other state or federal court. It raises no question worthy of review by this Court. Instead, the decision is consistent with long-established precedent uniformly noted with approval by this Court and numerous other courts nationwide. That precedent protects the conclusive presumption of parentage for children born in wedlock from collateral attack; it fosters substantive social policies of protecting the integrity of the family and promoting legitimacy.

Moreover, Petitioners' demand for a writ of certiorari is premised upon faulty jurisdictional claims and multiple misstatements of law and fact. No federal due-process challenge was made below. Even if one had been made, there is no valid basis on which to justify a challenge to the conclusively established parentage of the Younger Children.

I. Because Petitioners Failed To Raise A Federal Question In The State Court Proceedings, This Court Should Refuse To Issue A Writ Of Certiorari Due To Lack Of Jurisdiction.

In order for this Court to have jurisdiction to issue a writ of certiorari, the validity of a state statute must have been "drawn into question" on a federal ground, or a federal right must have been "specifically set up or claimed." 28 U.S.C. § 1257(a) (1993). The failure to properly raise a federal question in the state court action necessarily leaves the Supreme Court without jurisdiction. *See Hill v. California*, 401 U.S. 797, 805 (1971); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482 n.16 (1983) (the Court will not "decide federal constitutional issues raised here for the first time on review of state court decisions") (quoting *Cardinale v. Louisiana*, 394 U.S. 437, 438 (1969)).

Here, Petitioners failed to properly raise a federal question before the Minnesota state courts. While Petitioners assert that the Minnesota Court of Appeals denied them "due process under the 14th Amendment to the U.S. Constitution" (Pet. at 2), there is *not a single reference* in any of Petitioners' briefs or submissions filed with the district court **or** the Minnesota Court of Appeals to either "due process" (federal or state) or the "Fourteenth Amendment."[5] Because Petitioners did not raise due-process as an issue with either the district court or the Minnesota Court of Appeals, their petition seeking a writ of certiorari must fail.

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5. Similarly, counsel for the Trustees never addressed federal due-process concerns during oral argument at the district court or the Court of Appeals.

Supreme Court Rule 14.1(g)(i) requires a petitioner to specify the stage of state-court proceedings in which the federal questions sought to be reviewed were raised, the method in which the questions were raised, and the way the questions were passed on by the state courts. Here, Petitioners cite the one and only paragraph in the Trustees' Petition for Further Review to the Minnesota Supreme Court—prepared and filed *after* the issuance of the ruling adverse to Petitioners by the Court of Appeals—in which they mentioned the concept of "due process" at all:

> The trustees are the legal owners of the Trusts. The beneficiaries are the beneficial owners. By ignoring the rules regarding estoppel, the Court of Appeals' decision deprives these owners of their property on the strength of a Florida divorce case in which none of them could be heard and in which the property of the Trusts was not involved. If allowed to stand, this would be a violation of due process. *See Lustik v. Rankila*, 131 N.W.2d 741, 744 (Minn. 1964) (due process prevents the result of a prior proceeding from binding adversely a litigant who was a stranger to the earlier proceeding and had no opportunity to be heard); *Doerr v. Warner*, 76 N.W.2d 505, 511 (Minn. 1956) ("in the exercise of due process no court, regardless of its jurisdictional structure, may adjudicate directly upon a person's rights without such person being either actually or constructively before the court").

(Pet. for Further Rev. at 4.)

This single paragraph is insufficient to invoke this Court's jurisdiction for two reasons. First, raising a federal question for the first time in a petition for review with the highest state court is generally insufficient unless the court actually entertains the petition and expressly decides the question. *See Adams v. Robertson*, 520 U.S. 83, 89 n.3 (1997); *Hanson v. Denckla*, 357 U.S. 235, 243-44 (1958); *Radio Station WOW v. Johnson*, 326 U.S. 120, 128 (1945). Here, the Minnesota Supreme Court denied Petitioners' request for further review, and would not have entertained Petitioners' belated constitutional challenge even if it had accepted review. Under Minnesota law, a party cannot challenge the constitutionality of a statute for the first time on appeal to the Minnesota Supreme Court. *State v. Schleicher*, 672 N.W.2d 550, 555 (Minn. 2003). Because the Minnesota Supreme Court would not have considered Petitioners' constitutional arguments, this Court lacks jurisdiction to do so. *See Exxon Corp. v. Eagerton*, 462 U.S. 176, 181 n.3 (1983) (when constitutional issue is not decided below in a manner sufficient to bring the matter before a state appellate court, the U.S. Supreme Court lacks jurisdiction to consider the federal question).

Second, general "due-process" arguments such as Petitioners' are an inadequate jurisdictional basis for issuance of a writ of certiorari:

> [T]he passing invocations of "due process" we found [in petitioners' state court reply brief] fail to cite the Federal Constitution or any cases relying on the Fourteenth Amendment, but could have just as easily referred to the due process guarantee of the Alabama Constitution . . . and

> thus did not meet our minimal requirement that it must be clear that a *federal* claim was presented.

Adams, 520 U.S. at 89 n.3 (emphasis in original); *see also Bankers Life & Cas. Co. v. Crenshaw*, 486 U.S. 71, 77-78 (1988) (vague appeal to constitutional principles does not preserve a federal due-process claim).

The single paragraph that contains the whole of Petitioners' "due-process" claim makes no reference to federal due process or the Fourteenth Amendment of the United States Constitution; it refers to "due process" only generally in relation to "estoppel," and cites two Minnesota state court cases as supporting authority. Petitioners provide no indication that they are making a federal constitutional claim.[6] Because Petitioners failed to make any specific reference to federal due process, either by citing the Federal Constitution or cases relying upon the Fourteenth Amendment, they have not met the Court's minimal requirement that a federal claim was properly presented below. Consequently, their petition for a writ of certiorari should be denied.

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6. Indeed, if Petitioners had intended a constitutional challenge—state or federal—to the Minnesota Parentage Act, Rule 24.04 of the Minnesota Rules of Civil Procedure mandated that Petitioners notify the attorney general that the constitutionality of the Parentage Act was being drawn into question within such time as to afford the attorney general an opportunity to intervene. Petitioners did not provide the attorney general with notice of a constitutional challenge, calling into greater question whether they made such a constitutional challenge—as opposed to rhetorical flourish.

II. Even If Petitioners Properly Raised A Federal Question, They Have Not Been Deprived Of Due Process.

A. Petitioners' Alleged Deprivation of Property Without Due Process is Predicated Upon Misstatements of Law and Fact.

Petitioners claim they have a protected due-process right with respect to the Trust property that permits them to seek relief in this Court. This claim is plainly wrong. Indeed, Petitioners have no standing to appeal from the Court of Appeals judgment, much less assert phantom "due-process" rights. Under Minnesota law, an entity must be an "aggrieved party" to appeal from a judgment. *In Re Trust Created by Hill on Dec. 31, 1917*, 499 N.W.2d 475, 487 (Minn. Ct. App. 1993). It is well established that a trustee who is not adversely affected in any way by the matter he seeks to challenge is not "aggrieved," and thereby has no standing to obtain a judicial resolution of his challenge. *See, e.g., Toledo Trust Co. v. Farmer*, 135 N.E.2d 356, 361 (Ohio 1956); *First Nat'l Bank of Dewitt v. Yancey*, 826 S.W.2d 287, 288 (Ark. Ct. App. 1991), *In re Trust Under Agreement of David H. Keiser, Dated December 23, 1925*, 572 A.2d 734, 736 (Pa. Super. Ct. 1990).

The sole constitutionally protected interest claimed is a trustee's legal title to trust assets. However, Petitioners' legal title to trust assets is wholly unaffected by whether the Trusts have six or nine beneficiaries. The very authorities cited by Petitioners confirm that a title holder to trust assets who does not possess a beneficial interest in the Trusts does not possess sufficient rights to assert a cause of action with respect to the trust property. *See Farmers State Bank of Fosston v. Sig*

Ellingson & Co., 16 N.W.2d 319, 322 (Minn. 1944) (while the trustee may have title to the property, the chose of action rests with the beneficiary). "[W]here the order or judgment has to do with the right of one class of beneficiaries to share in the distribution of the trust estate as against another class, the trustee has no appealable interest. . . ." P.H. Vartanian, Annotation, *Right of Trustee of Express Trust to Appeal from Order or Decree Not Affecting His Own Personal Interest*, 6 A.L.R.2d 147 § 2 (2004); *see also Trust Under Agreement of David H. Keiser* 572 A.2d at 737. ("Where, as here, the order concerns the distribution of the trust assets to one group of beneficiaries at the expense of another group, the trustee is merely an unaggrieved stakeholder with no immediate or appealable interest."). The Court of Appeals' decision deprives the Trustees of no property whatsoever. Thus, Petitioners have no standing to assert "due-process" rights with respect to Trust assets.

Petitioners also baldly assert that the Court of Appeals did not disturb a district court determination that the trust terms "legitimately born to" and "lineal descendants" mean only persons of "biological" descent and thus Petitioners' interpretation of the language is the law of the case. This, too, is wrong. The Court of Appeals did not leave the district court's trust interpretation "undisturbed"; instead, it ***reversed*** the grant of summary judgment in favor of the Trustees and ordered summary judgment be entered in favor of Respondents.[7]

7. There were two primary issues before the Minnesota Court of Appeals: (1) whether Petitioners have standing to challenge the Younger Children's established parentage; and (2) if they do have standing, do the terms of the Trusts limit beneficiaries to those with a biological connection to JHM. As to the first issue, the Court of Appeals determined that Petitioners did not have standing to challenge the Younger Children's parentage, which means under applicable state law they are deemed biological descendants as a matter of law. (Cont'd)

This reversal voids the district court's ruling in its entirety.[8] *See Kulinski v. Medtronic Bio-Medicus, Inc.*, 577 N.W.2d 499, 502-03 (Minn. 1998) ("to reverse a judgment means to overthrow it by contrary decision, make it void, undo or annul it for error") (citing *Black's Law Dictionary* 1319 (6th ed. 1990)); *see also* 5 Am. Jur. 2d *Appellate Review* § 861 (2002) ("A compete reversal generally annuls the judgment below, and the case is put in the same posture in which it was before the judgment was entered. Thus, after the reversal on appeal, the parties rights are left wholly unaffected by any previous determination that was reversed. . . ."); *Gluscic v. Avera St. Luke's*, 649 N.W.2d 916, 920 (S.D. 2002) ("a reversal of a judgment without other direction nullifies the judgment, findings of facts, and conclusions of law, and *leaves the case standing as if no judgment or decree had ever been entered*") (emphasis in original; citation omitted). Instead, the Court of Appeals' confirmed that the Younger Children are irrebuttably JHM's legal and biological children:

(Cont'd)

This determination necessarily mooted the second issue of trust language interpretation, a fact the Court of Appeals recognized: "Because we conclude that Minn. Stat. § 501B.16 does not authorize the trustees' action, we do not address the alternative grounds for dismissal. . . ." *12/31/74 Trust Case,* 674 N.W.2d at 232-33. Had the Court of Appeals ruled upon the meaning of the trust terms, it would have rendered an advisory opinion, which the Minnesota Appellate Courts avoid. *Jasper v. Commissioner of Pub. Safety*, 642 N.W.2d 435, 439 (Minn. 2002); *see also* Restatement (Second) of Trusts § 259 cmt. c (1959) (courts are precluded from issuing advisory opinions in response to trustees' requests for instructions).

8. The district court's interpretation of the trust terms, which was made without legal or factual citation, is clearly wrong under Minnesota law. (*See* Resp. 07/07/03 Ct. of App. Br. at 10-21; Resp. 08/04/03 Ct. of. App. Reply Br. at 5-12.)

"We therefore conclude that the 1991 Florida dissolution decree and JHM's 1986 paternity action conclusively established the younger children's status as his biological issue under Florida law. That status is entitled to full faith and credit in Minnesota courts. . . ."[9] *12/31/74 Trust Case*, 674 N.W.2d at 230.

B. Even If Petitioners Had a Beneficial Interest in the Trusts, There Would Have Been No Deprivation of Due Process.

Even if, contrary to law and fact, Petitioners had the right to challenge the effect of JHM's divorce proceedings,[10] they still would not have had the right to prevent JHM from exercising the rights he retained under the terms of the Trusts. He had the right to add additional beneficiaries by having more children—conceiving them, acknowledging them, or adopting them. Both acknowledgment and adoption are conclusive methods of having children under Florida and Minnesota law. Petitioners' claim that their due-process rights have thus been violated is patently unfounded. This Court has rejected arguments like Petitioners', holding that even a biological father has no due-process right to challenge a conclusive presumption of paternity arising from a state parentage act. *Michael H. v. Gerald D.*, 491 U.S. 110, 121 (1989).

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9. Under the Minnesota Parentage Act, "a man is presumed to be the **biological** father of a child" born in wedlock. Minn. Stat. § 257.55, subd. 1 (2002) (emphasis added). Because the time limit for challenging this presumption has expired, JHM *is* the legal and biological father of the Younger Children.

10. Petitioners concede they could not have participated in these proceedings. (Pet. at 7 n.6.)

In *Michael H.*, this Court confirmed that the United States Constitution does not bar a state from establishing a substantive rule of law that a child born within wedlock is the lawful child of the husband, and, under such circumstances, from deeming paternity not to be an adjudicatory fact subject to litigation other than as expressly authorized by statute:

> While §621 [California paternity statute] is phrased in terms of a presumption, that rule of evidence is the implementation of a substantive rule of law. California declares it to be, except in limited circumstances, *irrelevant* for paternity purposes whether a child conceived during and born into, an existing marriage was begotten by someone other than the husband .... As the Court of Appeals phrased it "The conclusive presumption is actually a substantive rule of law based upon a determination by the Legislature as a matter of overriding social policy, that given a certain relationship between the husband and wife, the husband is to be held responsible for the child, and that the integrity of the family should not be impugned." Of course the conclusive presumption not only expresses the State's substantive policy but also furthers it, excluding inquiries into the child's paternity that would otherwise be destructive of family integrity and privacy.

Michael H., 491 U.S. at 119-20 (citation omitted).

Florida law, which governs the Younger Children's legal status, implements substantive polices protecting the integrity of families by making determinations of parentage conclusive

for all purposes. *Knauer v. Barnett*, 360 So. 2d 399, 406 (Fla. 1978); Fla. Stat. § 742.091 (2002); Fla. Stat. § 742.011 (2002). Here, the Minnesota Court of Appeals recognized that the Younger Children's parentage had been conclusively determined in Florida,[11] and that the Minnesota Parentage Act extends full faith and credit to such determinations. Minn. Stat. § 257.67, subd. 1 (2002); *see also* Minn. Stat. § 257.66, subd. 1 (2002) (adjudications of parentage are "determinative ***for all purposes***") (emphasis added). The Court of Appeals' holding that Petitioners are thus barred from challenging the Younger Children's parentage is entirely consistent with *Michael H.*

Petitioners' attack on *Michael H.* is unavailing.[12] Courts in many states have recognized the pitfalls in the outcome urged by Petitioners and addressed by *Michael H.*, and, therefore, have precluded parentage challenges by outsiders.[13]

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11. In a transparent effort to minimize the determinative effects of the 1991 divorce proceedings, Petitioners improperly refer to the Final Judgment of Dissolution of Marriage—by which JHM judicially acknowledged the Younger Children as his and agreed that they were to share equally with his other children in any testamentary disposition of his assets (Resp. Ct. of Appeals App. 67-72)—as a mere stipulation regarding "child support obligations." (Pet. at 4.)

12. Petitioners' attempt to distinguish *Michael H.* on the purported grounds that there were no third–party property interests at stake does not withstand scrutiny. Any determination of a parent-child relationship will necessarily affect property interests of third parties by determining the child's rights to inherit property and to receive benefits. Under Florida and Minnesota law, such third parties do not have standing to challenge a determination of parentage.

13. *See In re Trust Created by Agreement Dated Dec. 20, 1961*, 765 A.2d 746, 758 (N.J.), *cert. denied*, 534 U.S. 889 (2001) (prior

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For example, the New Jersey Supreme Court, in a case with facts very similar to those here (and as to which this Court denied

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adjudication of child-parent relationship bars third-party challenge to parentage, based upon language and policy of New Jersey's Parentage Act); *Knauer v. Barnett*, 360 So. 2d 399, 405 (Fla. 1978) (right to dispute legitimacy of child born in wedlock limited to husband and wife); *Weir v. Ferreira*, No. F026210 1997 Cal. App. LEXIS 1046 (Cal. Ct. App. Dec. 17, 1997) (trustees seeking to determine "issue" of trusts were barred from relitigation of question of child's parentage); *In the Matter of Estate of Lamey*, 689 N.E.2d 1265, 1268-69 (Ind. Ct. App. 1997) (child's uncle precluded from attempts to "disestablish" child's paternity for purposes of determining heirs); *Deatherage v. Phipps*, 441 P.2d 1020, 1023 (Okla. Sup. Ct. 1967) (where neither husband or wife disputed legitimacy of child born in wedlock, all others were barred from doing so); *Byrd v. The Travelers Ins. Co.*, 275 S.W.2d 861, 863-64 (Tex. Civ. App. 1955) ("If the father renounces the right to bastardize his alleged son . . . it is extinguished and can never thereafter be exercised by anyone"); *In re Paternity of Vainio*, 943 P.2d 1282, 1285 (Mont. 1997) (siblings lacked standing); *In re Saloy*, 10 So. 872, 876 (La. 1892) (if father does not dispute paternity, "the door is forever closed" to others); *Theis v. City of Miami*, 564 So. 2d 117, 119 (Fla. 1990) (employer precluded from challenging legitimacy of child born in wedlock); *Gonzales v. Pacific Greyhound Lines*, 214 P.2d 809, 811 (Cal. 1950) (employer of decedent-father, collateral heirs and non-relative beneficiaries cannot question legitimacy of child born in wedlock); *Favre v. Celotex Co.*, 139 So. 904, 905 (La. Ct. App. 1932) (employer of decedent-father denied standing to dispute parentage of child born in wedlock); *Beard v. Vincent*, 141 So. 862, 863-64 (La. 1932) (collateral heirs of decedent barred from challenging parentage of children born during marriage); *Clement v. Merchants Nat'l Bank of Mobile*, 493 So. 2d 1350, 1352 n.2 (Ala. 1986) (parties questioned for not raising standing issues for collateral relative); *Speight v. Wheeler*, 310 So. 2d 716, 719 (Miss. 1974) (heirs of decedent precluding from attacking legitimacy); *Johnson v. Johnson*, 395 So. 2d 640, 641 (Fla. Dist. Ct. App. 1981) (relitigation of paternity issue resolved in divorce proceedings would be "chaotic" and to require children and former wives to submit to blood tests would be humiliating).

certiorari), confirmed that beneficiaries of trust property may not seek to defeat established paternity determinations in order to increase their proportionate share of trusts assets. *In re Trust Created by Agreement Dated Dec. 20, 1961*, 765 A.2d 746, 758-59 (N.J.), *cert. denied*, 534 U.S. 889 (2001). The New Jersey decision, citing *Michael H.*, rejected the argument that such a rule of law violates the beneficiaries' due process, and noted that the alleged protected interest (a purported economic right to become eligible for an unspecified share of trust proceeds) occupies a lower place in the hierarchy of rights when compared to the putative father's right to a parent-child relationship at issue in *Michael H. In re Trust Created by Agreement Dated Dec. 20, 1961*, 765 A.2d at 758-59. Petitioners have offered no compelling reasons why a contrary result should be reached here even if the issue had been properly raised below.

CONCLUSION

For the foregoing reasons, Respondents respectfully urge the Court to deny the Petition for Writ of Certiorari.

Respectfully submitted,

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